

**REPORT - PLANNING COMMISSION MEETING  
May 8, 2003**

**Applicant:** Paseo Padre Estates (PLN2002-0003)

**Proposal:** To consider a General Plan Amendment and Environmental Impact Report (SCH# 200201089) to change the land use designation from Open Space .25 dwelling units per acre to Medium Density Residential 6.5 -10 dwelling units per acre on approximately 19.1 acres located in the Central Planning Area. An Environmental Impact Report was prepared and circulated for this project.

**Recommended Action:** Recommend to City Council certification of the Final Environmental Impact Report (EIR) (SCH#200201089) and recommend denial of the General Plan Amendment.

**Location:** 40720 Paseo Padre Parkway in the Central Planning Area.

**APN:** 525-0150-004-07

**Area:** 19.1 acre parcel

**Owner:** Marvin Blankstein and Manuel Delarroz

**Agent of Applicant:** Roger Shanks, Bunton Clifford Associates; Ariel Basse

**Consultant(s):** David J. Powers and Associates (EIR Consultant)

**Environmental Review:** A Draft Environmental Impact Report (DEIR) was prepared and circulated from October 2, 2002 to November 15, 2002. A public hearing for the DEIR was held on November 7, 2002. The Final Environmental Impact Report (EIR) responding to comments on the DEIR has been prepared and circulated for this project.

**Existing General Plan:** Open Space with .25 dwelling units per acre; Transportation Corridor

**Existing Zoning:** O-S Open Space District and O-S (F) Open Space Flood Combining District

**Existing Land Use:** Cattle grazing

**Public Hearing Notice:** Public hearing notification is applicable. 340 notices were mailed to interested parties and owners and occupants of property within a minimum radius of 1,000 feet of the site on the following streets: Quintana Way, La Purissima Place, Valdez Way, Casa Marcia Place, Lemos Lane, Marabu Way, Oro Drive, Una Court, Shadow Brooke Common, Gomes Road, Clymer Lane, Dolores Place, Marino Way, Ladero Street, Wolcott Place, Penn Lane, Capa Drive, Vaca Drive, Mino Way, Terry Terrace, Marty Terrace, Cruz Court, Calido Place, and Rioja Court. The notices to owners and occupants were mailed on April 28, 2003. A Public Hearing Notice was delivered to The Argus newspaper on April 23, 2003 to be published by April 28, 2003.

**Executive Summary:** The proposed project is an amendment to the land use designation of a 19.1 acre site north of Paseo Padre Parkway between two rail lines from Open Space to Medium Density Residential 6.5-10 units per acre. Staff recommends that the Planning Commission recommend the City Council certify the Final Environmental Impact Report (EIR) (SCH#200201089) and deny the proposed General Plan Amendment.

**Background:** The project site is 19.1 acres and located in the Central Planning Area adjacent to Central Park. The site has been designated as agriculture or open space land since the City's incorporation.

The City of Fremont has prepared an Environmental Impact Report (EIR) for the Paseo Padre Estates General Plan Amendment. Environmental Impact Reports are prepared to disclose environmental impacts to meet the requirements of the California Environmental Quality Act (CEQA). The Environmental Impact Report (EIR) serves as a means of recognizing and disclosing environmental impacts that may result from development of the proposed project.

**Project Description:** The project site is adjacent to and east of Central Park; north of the San Francisco Public Utility Commission (SFPUC) Hetch Hetchy pump station parcel; and between the two Union Pacific Railroad tracks. The proposed project is a General Plan Amendment to change the land use designation from Open Space .25 dwelling units per acre to Medium Density Residential 6.5 -10 dwelling units per acre on a 19.1 acre site. The proposed designation would allow the site to be developed with approximately 124 to 191 residential units. The existing Open Space designation allows residential development at a density of 0.25 dwelling units per acre, which would allow four residential units on the project site, provided that adequate site access could be obtained prior to development. The existing access easement would only allow two residential units. The applicants have stated they are in the process of obtaining an easement from SFPUC to provide a second point of access, however no additional access beyond an existing 25 foot wide easement is available at this time. The site is also generally traversed by a Transportation Corridor which is not proposed to be eliminated or changed.

#### **PROJECT ANALYSIS:**

**Existing Land Use:** The 19.1 acre site is a approximately 1,800 feet long and approximately 550 feet wide at the widest point. It is located between two sets of raised railroad tracks and adjacent to the City golf course to the north. Central Park (Stivers Lagoon Nature Area) is located west of the westerly railroad track. To the south of the property is property owned by the San Francisco Public Utilities Commission (SFPUC) which contains a Hetch Hetchy water line and pump station. The site has two storage sheds and a fenced enclosure that could be used for holding cattle. The site is currently used for cattle grazing. On the east side of the railroad tracks are single family homes, but the site is isolated from that residential area by the railroad tracks and no access is permitted across them. A similarly situated site between the railroad tracks and to the south of Paseo Padre Parkway is currently vacant and designated under the General Plan for Light Industrial use.

**Site Access:** The site has no public street frontage and access to the project site has traditionally been a dirt driveway through the SFPUC parcel. The only potentially available point of access for the proposed development on the site is through the SFPUC parcel; according to information provided by the applicant, the only currently available access is a 25 foot easement across the SFPUC parcel on which the dirt driveway is currently located. The applicant proposes to obtain additional access through the SFPUC property, but has not secured such access to date. The applicant also needs to obtain an easement for utilities to serve the proposed development. In order to allow for the level of development proposed under the General Plan amendment, the applicant would need two points of access: a public or private street access meeting minimum city standards (a minimum of 40 feet of right-of-way) and a second point of access for emergency vehicles. Such access would need to cross over large above-ground water mains that traverse the Hetch Hetchy site. Roadway access would be from Paseo Padre Parkway. The City is currently proposing to depress Paseo Padre Parkway under the railroad tracks, and to relocate a portion of the western-most railroad tracks toward the center of the site. Although additional discretionary actions of the City Council must be taken prior to commencing construction of the grade separation project, funding is programmed, and construction is planned to commence in early 2004. Project Alternative 4 of the EIR describes potential access from the project site to Paseo Padre Parkway after construction of the grade separation project.

**General Plan Conformance:** The General Plan is the foundation of the City of Fremont regarding the future character and quality of development in the city. The General Plan is a comprehensive, long term plan that includes goals, policies, objectives, and implementation measures. The General Plan provides both a vision of the future and a guide to private development and is the official policy upon which land use and development decisions are based. State law requires all elements of a General Plan must be internally consistent. The Fundamental Goals (Chapter 2) are the foundation of the plan and provide direction regarding interpretation of the General Plan. Chapter 12, Administering the General Plan, discusses the process for modifying or amending the General Plan. The process of an amendment is described as follows:

“An evaluation of all requested General Plan amendments shall be conducted to review the conformance of the amendment with applicable General Plan goals, objectives and policies. If amendments are intended to be approved which are not consistent with specific goals, objectives and policies, then all relevant goals, objectives and policies need to be reexamined and changed before final approval of such amendments.”

The site has been designated as agriculture or open space land since the City's incorporation. These designations were considered appropriate due to the location of the site between two railroad tracks, the limited access to the site, and the historical use of the site. The existing Open Space designation allows a variety of agricultural and outdoor recreational uses. The designation and zoning also allows residential development at a density of 0.25 dwelling units per acre; that is, four residential units on the 19.1 acre project site, provided that adequate site access could be obtained prior to development. Current City standards related to required access would allow for a maximum of two residential units on a driveway with a width of 25 feet.

#### Health and Safety Policy HS 4.1.2 : Emergency and Vehicular Access

The General Plan City policies and City ordinances and standards require adequate access for both residents and for fire services (Health & Safety Policy HS 4.1.2). The required roadways for a subdivision must have a public or private street in accordance with City standards (FMC8-1502). If a development has more than twenty-five units, a second point of access is required. This second point of access allows response by emergency personnel and equipment and also provides for evacuation in situations such as a flood or fire. Two points of access are essential to develop the 124 to 191 residential units. The City has approved a few developments of approximately this number of units with one main point of access and a second emergency access from a different direction or roadway. A private street serving more than three units requires 40 feet of right-of-way. The applicants conceptual site plan suggests two points of access off Paseo Padre Parkway that would be approximately 150 to 300 feet apart. However, that conceptual access plan would have a future roadway crossing through seasonal wetlands and the willow scrub-shrub habitat. If the second access road avoided those areas, it would be close to the existing access drive. These two points of access would continue to be between two railroad lines. Railroads carry hazardous materials and were an accident to occur on one of the railroad lines, adequate emergency access and evacuation routes would be critical. The current lack of available access, the probable location of access close together and the fact that one of the points of access could be affected by flooding (see DEIR, page 24), suggests that appropriate access cannot be assured. In staff's view, the proposed project is therefore not consistent with this General Plan policy.

#### Health and Safety Policy HS 8.1.1: Noise and Health

Health and Safety Policy HS8.1.1 states that new residential development shall comply with city standards for noise exposure. Although the General Plan does not include standards related to vibration exposure, the overall intent of the General Plan is to ensure that development is of high quality and that the health and safety of residents is protected. Criteria related to exposure to vibration have only been available from the Federal Transportation Agency (FTA) since 1995, and assessment of vibration exposure is a relatively new consideration under the California Environmental Quality Act. The Paseo Padre Estates Environmental Impact Report found that both noise and vibration impacts on future residents in the proposed new residential area are significant. Outdoor noise levels near the Paseo Padre crossing exceed the City's maximum acceptable noise levels for residential development. Vibration levels also exceed the Federal Transportation Authority (FTA) criteria. Proposed mitigation measures could reduce these impacts to what is considered less than significant, but residential development in this area would still expose residents to relatively high levels of noise and some vibration from railroad activities. Mitigations proposed in the DEIR would significantly reduce the area available for residential development (see DEIR, Alternative 2). Staff believes that the proposed General Plan Amendment is therefore inconsistent with the clear intent of the General Plan to minimize exposure of residents to noise and other health and safety impacts.

#### General Plan Policy T2.2.1: BART

Transportation Policy T2.2.1 states that the City “actively supports a BART extension to the southern part of Fremont with stations in Irvington, Warm Springs and South Fremont.” The General Plan map identifies the proposed BART extension as being located within the “Transportation Corridor” that generally traverses the project site. When the 1991 General

Plan was prepared, the exact location of the proposed BART extension was not known, though it was assumed that it would run near the existing rail lines.

Subsequent to the preparation of the General Plan, in 1992 BART adopted two possible alignments for its southern extension to Warm Springs. The differences between the two adopted alignments relates to how BART would traverse Central Park and for purposes of this discussion are irrelevant. The adopted BART alignments would have traversed a portion of the site. However, BART is currently considering a revised alignment and has recently released a Warm Springs Extension (WSX) Draft Supplemental Environmental Impact Report (DSEIR) for the revised project. At the time of the preparation of the Paseo Padre Estates EIR, the WSX DSEIR was not available and no analysis of its impacts on the proposed project was possible. Nevertheless, approval of the General Plan Amendment would not preclude BART from acquiring right of way, should it be needed to the proposed extension project, although additional mitigations may be required to address the impacts of BART on the project site, should the General Plan amendment be approved.

**Environmental Analysis:** An EIR for the Paseo Padre Estates proposal has been prepared to disclose environmental impacts to meet the requirements of the California Environmental Quality Act (CEQA). A Draft EIR (DEIR) must be circulated for public review and comment for a minimum of 45 days prior to any action being taken on the project. The review/comment period began on October 2, 2002 and ended November 15, 2002. The Planning Commission also held a public hearing on November 7, 2002 to receive testimony and comments regarding the DEIR. All written and oral comments received during the comment period have been responded to in the Final Environmental Impact Report (Final EIR). The Final EIR was published on April 24, 2003. The Final EIR and the DEIR together constitute the complete Environmental Impact Report.

An EIR is an objective informational document to inform the public agency decision makers and the public of the significant environmental effects of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. A public agency shall consider the information in the EIR along with other information that may be presented to the agency regarding the proposed project. An EIR regarding a proposed amendment of the General Plan will focus on the secondary effects that can be expected to follow from the amendment. However, the EIR may not be as detailed as an EIR on a specific construction project. An EIR should include a sufficient degree of analysis to provide decision makers enough information to consider the environmental consequences of the proposed project. The Paseo Padre Estates EIR identified potentially significant environmental impacts to land use, geology and soils, hydrology and water quality, vegetation and wildlife, hazardous materials, transportation and circulation, air quality, noise and vibration, utilities, and public services; however most impacts could be mitigated to a less than significant level through conformance with the identified City policies. More specific mitigation measures conforming to the policies would be incorporated into or required of a development/construction proposal as a condition of approval. A more detailed description of the above potential impacts and mitigation measures are described in the DEIR and the Final EIR previously sent to Planning Commission.

The EIR has identified the following project impacts as significant unavoidable impacts that cannot be mitigated to a less than significant level:

- **Land Use:** Based on the adopted General Plan policy, implementation of the proposed project would create a significant unavoidable impact because it does not provide the required resident and emergency vehicle access for the residential density proposed.
- **Land Use:** Implementation of the proposed project without a utility easement through the San Francisco Public Utility Commission parcel would be a significant unavoidable impact.
- **Hydrology and Water Quality:** The proposed project may not have required emergency vehicle and resident access during a 100-year flood event.
- **Transportation and Circulation:** The site lacks adequate emergency vehicle access is a significant unavoidable impact.

- **Utilities:** Implementation of the proposed project without a utility easement through the San Francisco Public Utility Commission parcel would be a significant unavoidable impact.
- **Public Services:** Development of the project without two points of access could result in significant adverse public health and safety impacts.

Pursuant to Public Resources Code Section 15093, a Statement of Overriding Considerations must be adopted for **each** of the above significant unavoidable impacts before approval of the proposed General Plan amendment. The Statement of Overriding Considerations must include findings that there are specific overriding economic, legal, social, technological or other benefits of the project which outweigh the significant effects on the environment. This is in addition to the required findings regarding significant effects that can be mitigated.

**Conclusion:** Staff believes that the proposal to modify the General Plan designation of the 19.1 acre parcel from Open Space to medium density residential should be denied. There continues to be insufficient access to the site and it remains unclear whether adequate access to accommodate the proposed General Plan Amendment is feasible. Even should access be provided, the two points of access are likely to be very near one another and between two railroad lines and subject to flooding. Lack of adequate access would preclude adequate emergency response to a project of the density proposed. Noise and vibration impacts from trains also make this area inappropriate for the level of residential development proposed. The EIR also identifies the loss of approximately 2.0 acres of willow scrub-shrub habitat; loss of 0.2 acres of seasonal wetlands; loss of ordinance size trees; loss of special status plant and animal species; and possible impacts to Stivers Lagoon Nature Area. While mitigation measures for individual impacts are possible, the overall result of mitigation measures and resulting design restrictions would severely limit the residential development potential of this site. A medium density residential designation is inappropriate under these circumstances.

**Exhibits:** Exhibit "A" General Plan Amendment

**Enclosures:** Applicant statement

**Recommended Actions:**

1. Hold public hearing.
2. Recommend that the City Council certify the Environmental Impact Report as complete and reflecting the independent analysis of the City.
3. Recommend that the City Council deny General Plan Amendment PLN2002-0003.

# EXHIBIT "A"

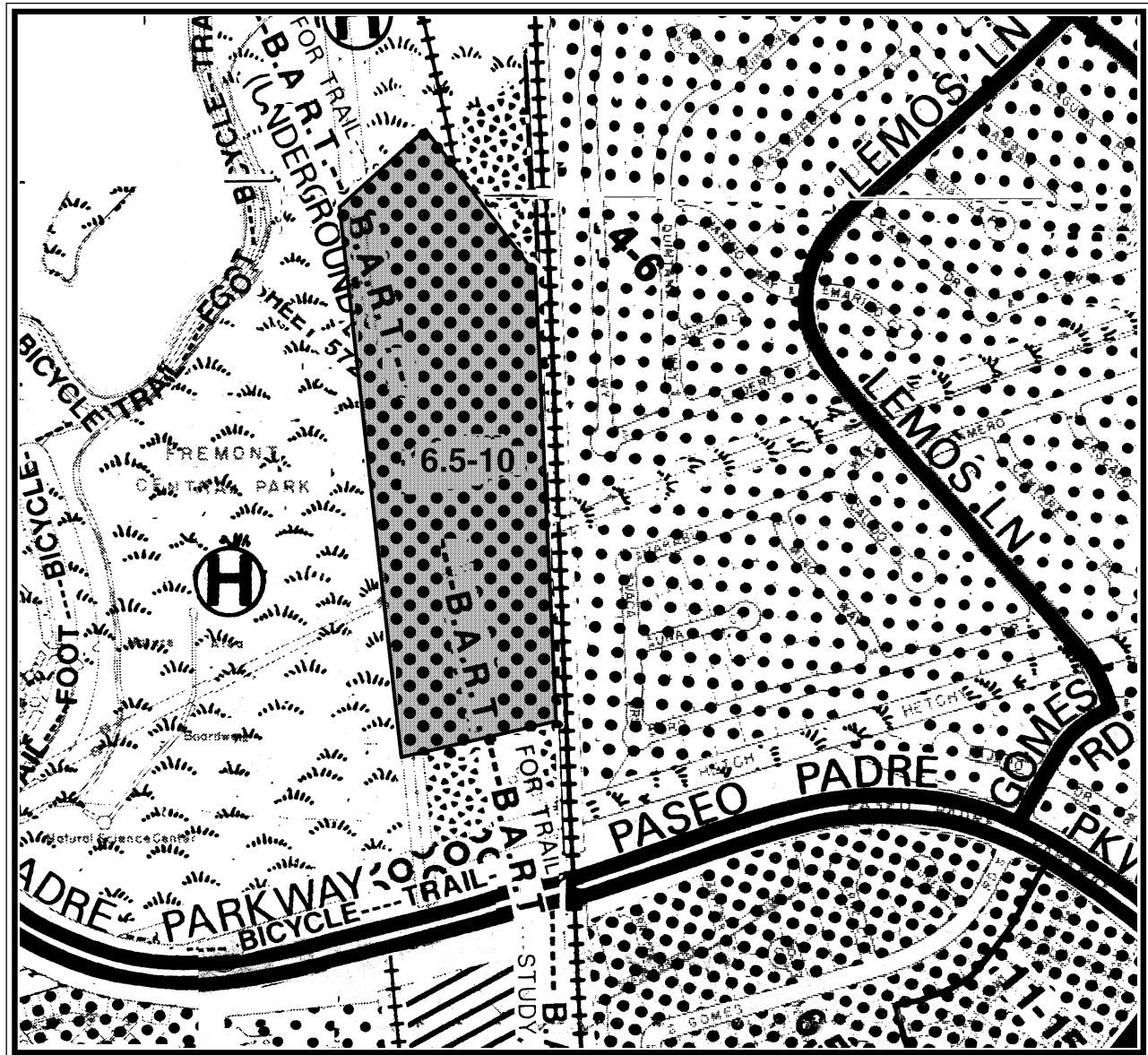
Attached to and made a part of

**Resolution No.** \_\_\_\_\_

adopted by the City Council of the City of Fremont, California

**On the** \_\_\_\_\_ **day of** \_\_\_\_\_, **2002** .

## GENERAL PLAN LAND USE DIAGRAM (SECTION) CITY OF FREMONT, CALIFORNIA



From: Open Space.25 dwelling units  
To: Medium Density Residential 6.5-10

[pc 04-24-03] 78-380, 78-384, 72-380, 72-384

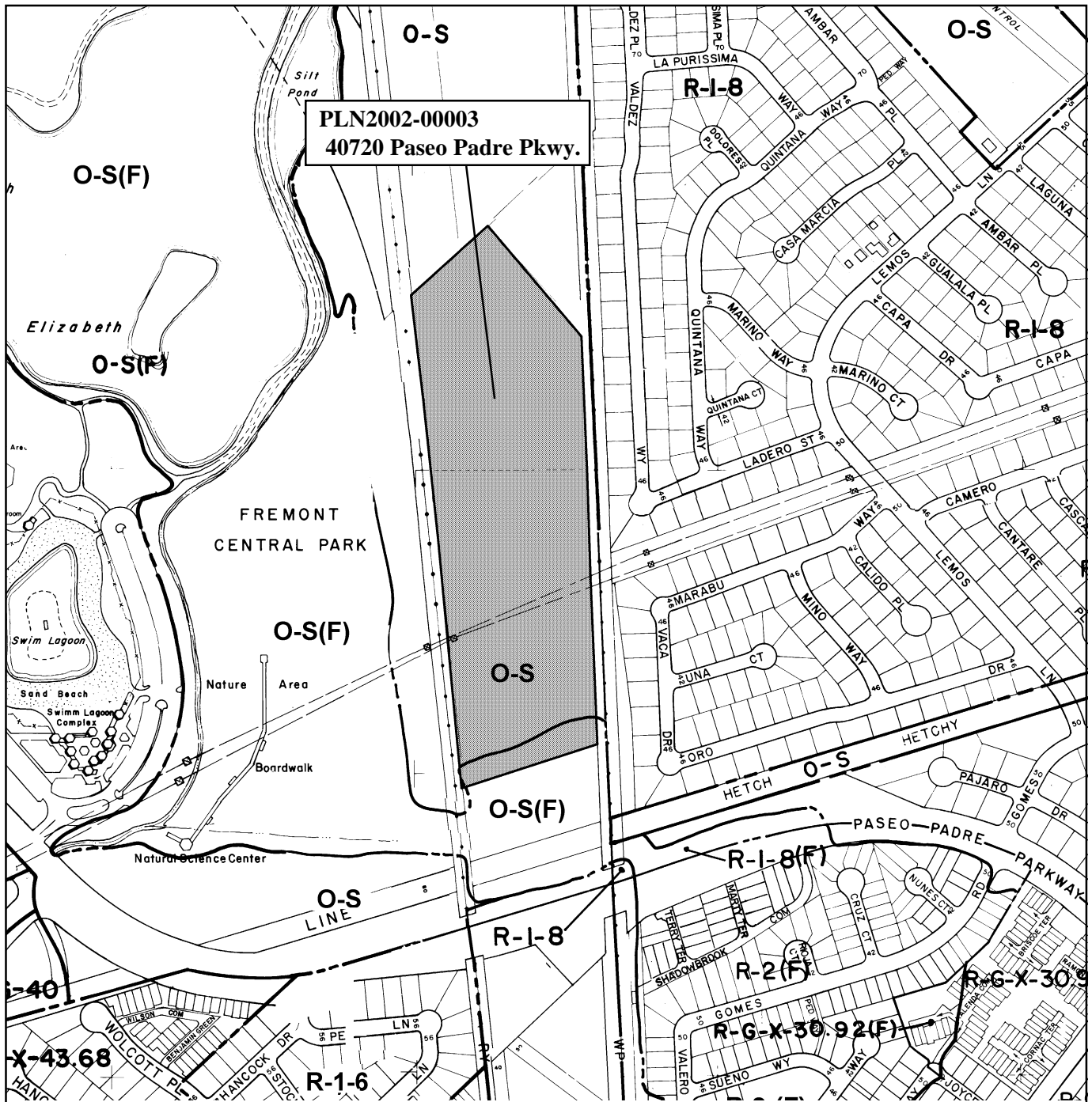


**AFFECTS THE LAND USE DIAGRAM  
FOR THE IRVINGTON PLANNING AREA**

Associated files:

PLN2002-00003 (GPA)

# INFORMATIONAL

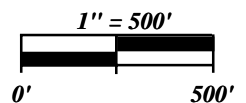


Existing Zoning

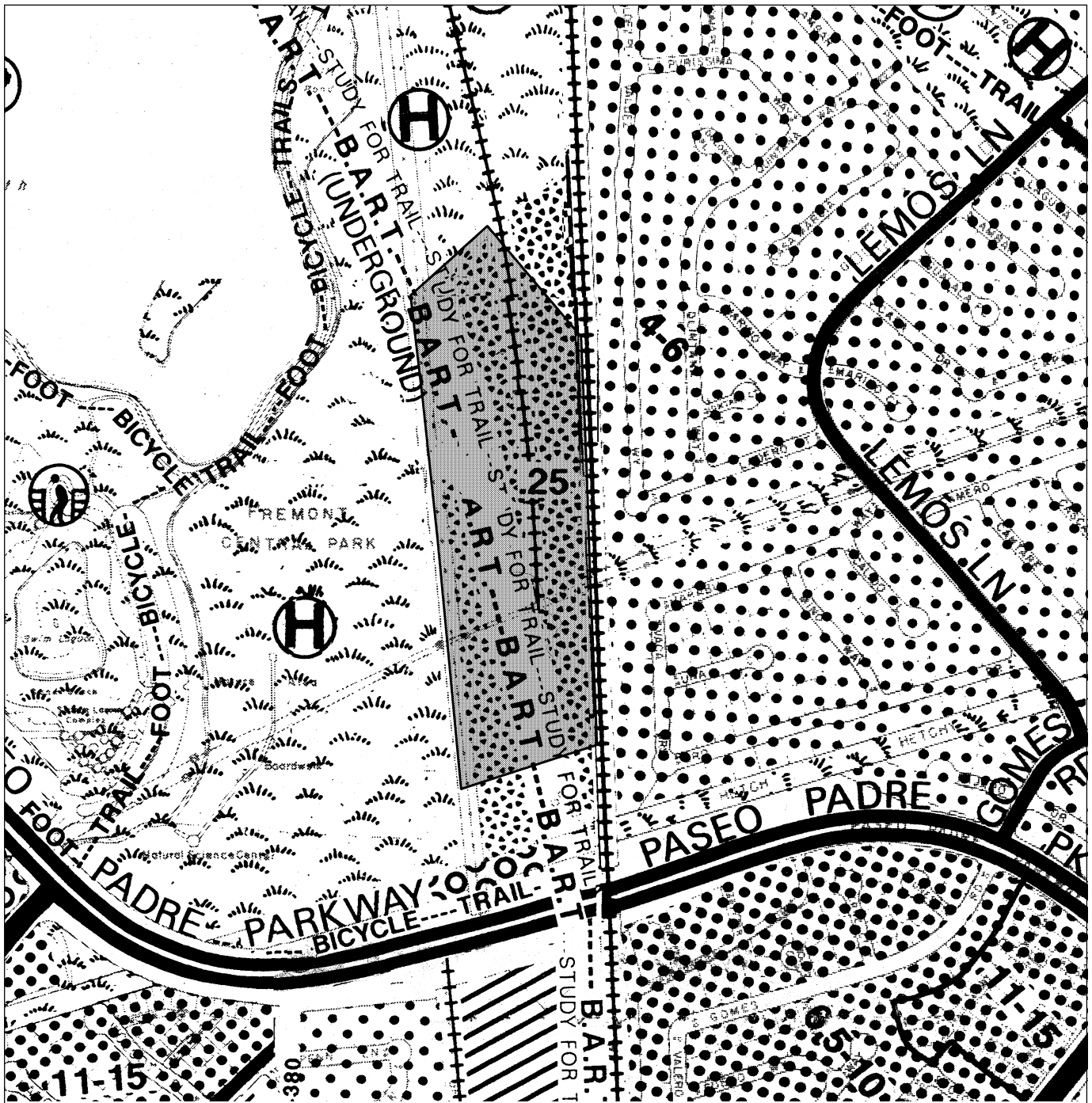
**Project Number:** PLN2002-00003 (GPA, EIR)  
**Project Name:** Paseo Padre Estates  
**Project Description:** To consider a General Plan Amendment and Environmental Impact Report (SCH#200201089) to change the land use designation from Open Space .25 dwelling units per acre to Medium Density Residential 6.5-10 dwelling units per acre on approximately 19 acres located in the Central Planning Area.



**Note:** Prior arrangements for access are not required for this site.



# INFORMATIONAL



Existing General Plan

**Project Number:** PLN2002-00003 (GPA, EIR)

**Project Name:** Paseo Padre Estates

**Project Description:** To consider a General Plan Amendment and Environmental Impact Report (SCH#200201089) to change the land use designation from Open Space .25 dwelling units per acre to Medium Density Residential 6.5-10 dwelling units per acre on approximately 19 acres located in the Central Planning Area.



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